



State of Wisconsin
2003 - 2004 LEGISLATURE

LRB-0641/6
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2003 BILL

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1 AN ACT *to repeal* 71.80 (19) (b); *to renumber* 72.23; *to renumber and amend*
2 77.59 (4) (c); *to amend* 50.14 (4), 71.03 (6) (a), 71.03 (8) (b), 71.10 (6) (a), 71.10
3 (6) (b), 71.10 (6m) (a), 71.65 (5) (a) 1., 71.80 (18), 73.01 (4) (a), 77.59 (5), 77.61
4 (14), 77.9941 (4), 77.9964 (2), 78.22 (4), 78.68 (10), 139.03 (2x) (d), 139.05 (2a),
5 139.315 (4) and 139.38 (5); and *to create* 71.01 (7n), 71.10 (6) (e), 71.10 (6m)
6 (c), 71.22 (5m), 71.34 (1m), 71.42 (2m), 72.23 (2), 72.30 (1m), 73.13, 77.58 (3) (c),
7 78.39 (5d), 78.39 (5m), 139.11 (2r), 139.38 (2r), 139.75 (9m) and 139.82 (2r) of
8 the statutes; **relating to:** the liability of married persons filing a joint income
9 tax return, the payment of the alternate fuel tax and the tobacco products tax,
10 estate tax interest, qualified retirement systems, reducing nondelinquent
11 taxes, ~~rounding dollar amounts to whole dollars on all tax returns~~ extending
12 the time for filing a tax reconciliation report, delivering tax-related documents

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- 1 and related payments, granting rule-making authority, and providing a
2 penalty.

Analysis by the Legislative Reference Bureau**REDUCING TAXES**

Under current law, any taxpayer may petition the Department of Revenue (DOR) to reduce delinquent taxes, including any applicable costs, penalties, and interest. If DOR determines that the taxpayer is unable to pay in full the amount due, based on an examination of the taxpayer under oath, the taxpayer's financial statements, and any other information required by DOR, DOR determines the amount that the taxpayer is able to pay and then enters an order reducing the taxes, costs, penalties, and interest owed by the taxpayer.

If within three years from either the date on which DOR enters the order that reduces the taxpayer's taxes or the date of the final payment according to a payment schedule determined by DOR, whichever is later, DOR determines that the taxpayer has an income or owns property that is sufficient to enable the taxpayer to pay the remainder of the original delinquent taxes, including costs, penalties, and interest, DOR must reopen the order and order the payment in full of such taxes, costs, penalties, and interest.

This bill expands current law so that DOR is authorized to reduce any taxes, costs, penalties, and interest that are due from a taxpayer, regardless of whether the taxes, costs, penalties, and interest are delinquent.

INCOME AND FRANCHISE TAXES

Under current law, spouses that file a joint income tax return are both liable for the payment of any tax related to that return. However, DOR may relieve a person of any tax liability related to a joint return, in a manner specified by the Internal Revenue Code and adopted by this state. Generally, DOR may relieve a person of any tax liability related to a joint return if the person's spouse did not notify the person of any tax liability or understatement of taxes related to the joint return. This bill corrects an outdated reference to the sections of the Internal Revenue Code that relate to a spouse's tax liability for a joint income tax return. The bill also requires a spouse to apply for relief from tax liability within two years from the date on which DOR begins collection activities on the spouse's tax liability or within two years from the effective date of the provision, whichever is later.

Under current law, an employer is required to deduct and withhold state income taxes from an employee's pay and to deposit those taxes with DOR on a quarterly basis. An employer must also file a tax reconciliation report with DOR on an annual basis. Under current law, DOR cannot grant an employer an extension for filing such a report. This bill allows DOR to grant a 30-day extension for filing an annual reconciliation report.

This bill clarifies that a qualified retirement fund for federal income tax purposes is a qualified retirement fund for state income tax purposes.

BILL**SALES AND USE TAXES**

Under current law, if a seller makes a claim for a refund of sales taxes or use taxes and the claim is honored, the seller is required to pass along the refund and related interest to the buyers and to submit to DOR the portion of the refund that could not be passed on, along with a penalty. Under current law, if a seller receives a sales or use tax refund as the result of an audit, the seller is not required to submit the refund and related interest to the buyers. Also, a seller is not required to submit to the buyers sales or use taxes that are collected erroneously.

This bill requires a seller who receives any refund of sales or use taxes, or who collects sales or use taxes erroneously, to submit such a refund or taxes to the buyer, or to DOR if the buyer cannot be located, within 90 days after receiving a refund or after discovering that the seller has collected taxes erroneously. Any portion of a refund or taxes not submitted to the buyer, or to DOR if the buyer cannot be located, within that 90 days must be submitted to DOR, along with a penalty.

OTHER TAXATION

Under current law, a taxpayer may round dollar amounts on an income or franchise tax return to the nearest whole dollar. This bill permits DOR to require a taxpayer round dollar amounts to the nearest whole dollar on an income or franchise tax return. This bill also permits DOR to require that a taxpayer round dollar amounts to the nearest whole dollar on tax returns or tax reports related to sales and use taxes, estate taxes, fuel taxes, cigarette and tobacco product taxes, alcohol taxes, food and beverage taxes, premier resort area taxes, rental car fees, and dry cleaning fees.

Under current law, an estate tax that is not paid on the date on which it is due is subject to interest at the rate of 12% a year from the date of the decedent's death. Under the bill, DOR ~~for the circuit court that has jurisdiction over matters related to the estate~~ may waive the interest imposed on any additional estate taxes that arise from the discovery of property omitted in the inventory of the estate's total assets or in the original tax determination, if due diligence was exercised in determining the assets.

Under current law, generally, a tax-related document or payment that DOR must receive by a specified date is timely received, if the document or payment is mailed in a properly addressed envelope; the sender pays the postage; the envelope is postmarked on the day that the document or payment is due; and the document or payment is received within five days from the date on which the document or payment is due.

Under this bill, mailing a tax-related document or payment includes using a delivery service that has been approved by the Internal Revenue Service, for federal tax purposes.

This bill will be referred to the Joint Survey Committee on Tax Exemptions for a detailed analysis, which will be printed as an appendix to this bill.

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For further information see the *state and local* fiscal estimate, which will be printed as an appendix to this bill.

The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:

SECTION 1. 50.14 (4) of the statutes is amended to read:

50.14 (4) Sections 77.59 (1) to ~~(5)~~ (5m), ~~(6) (intro.)~~, (a) and (c) and (7) to (10), 77.60 (1) to (7), (9) and ~~(10)~~, 77.61 (9) and (12) to (14) and 77.62, as they apply to the taxes under subch. III of ch. 77, apply to the assessment under this section.

SECTION 2. 71.01 (7n) of the statutes is created to read:

71.01 (7n) Notwithstanding sub. (6), a qualified retirement fund for a taxable year for federal income tax purposes is a qualified retirement fund for the taxable year for purposes of this subchapter.

SECTION 3. 71.03 (6) (a) of the statutes is amended to read:

71.03 (6) (a) Reports required under this section shall be made on or before April 15, or April 30 if the person files an electronic return, following the close of a year referred to in sub. (2) (a), or if such person's fiscal year is other than the calendar year then on or before the 15th day, or the last day if the person files an electronic return, of the 4th month following the close of such fiscal year, or if the return is for less than a full taxable year on the date applicable for federal income taxes under the internal revenue code Internal Revenue Code, to the department of revenue, in the manner and form prescribed by the department of revenue, whether notified to do so or not. Such persons shall be subject to the same penalties for failure to report as those who receive notice. If the taxpayer is unable to make his or her own return, the return shall be made by a duly authorized agent or by the guardian or other person charged with the care of the person or property of such taxpayer.

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1 **SECTION 4.** 71.03 (8) (b) of the statutes is amended to read:

2 71.03 (8) (b) The final payment of taxes on incomes of persons other than
3 corporations who file on a calendar year basis shall be made on or before April 15,
4 or April 30 if the person files an electronic return, following the close of the calendar
5 year, except for persons electing to have the department compute their tax under sub.
6 (4). If the return of a person other than a corporation is made on the basis of a fiscal
7 year, such final payment shall be made on or before the 15th day, or the last day if
8 the person files an electronic return, of the 4th month following the close of such fiscal
9 year, except for persons electing to have the department compute their tax under sub.
10 (4).

11 **SECTION 5.** 71.10 (6) (a) of the statutes is amended to read:

12 71.10 (6) (a) *Joint returns.* Persons filing a joint return are jointly and severally
13 liable for the tax, interest, penalties, fees, additions to tax and additional
14 assessments under this chapter applicable to the return. A person shall be relieved
15 of liability in regard to a joint return in the manner specified in section ~~6013 (e)~~ 6015
16 (a) to (d) and (f) of the internal revenue code, notwithstanding the amount or
17 percentage of the understatement Internal Revenue Code.

18 **SECTION 6.** 71.10 (6) (b) of the statutes is amended to read:

19 71.10 (6) (b) *Separate returns.* A spouse filing a separate return may be
20 relieved of liability for the tax, interest, penalties, fees, additions to tax and
21 additional assessments under this chapter ~~with regard to unreported marital~~
22 ~~property income~~ in the manner specified in section 66 (c) of the ~~internal revenue code~~
23 Internal Revenue Code. The department may not apply ch. 766 in assessing a
24 taxpayer with respect to marital property income the taxpayer did not report if that
25 taxpayer failed to notify the taxpayer's spouse about the amount and nature of the

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1 income before the due date, including extensions, for filing the return for the taxable
2 year in which the income was derived. The department shall include all of that
3 marital property income in the gross income of the taxpayer and exclude all of that
4 marital property income from the gross income of the taxpayer's spouse.

5 **SECTION 7.** 71.10 (6) (e) of the statutes is created to read:

6 71.10 (6) (e) *Application for relief.* A person who seeks relief from liability
7 under par. (a) or (b) shall apply for relief with the department, on a form prescribed
8 by the department, within 2 years after the date on which the department first
9 begins collection activities after the effective date of this paragraph [revisor
10 inserts date].

11 **SECTION 8.** 71.10 (6m) (a) of the statutes is amended to read:

12 71.10 (6m) (a) A formerly married or remarried person filing a return for a
13 period during which the person was married may be relieved of liability for the tax,
14 interest, penalties, fees, additions to tax and additional assessments under this
15 chapter ~~for unreported marital property income~~ from that period as if the person
16 were a spouse under section 66 (c) of the ~~internal revenue code~~ Internal Revenue
17 Code. The department may not apply ch. 766 in assessing the former spouse of the
18 person with respect to marital property income that the former spouse did not report
19 if that former spouse failed to notify the person about the amount and nature of the
20 income before the due date, including extensions, for filing the return for the taxable
21 year during which the income was derived. The department shall include all of that
22 marital property income in the gross income of the former spouse and exclude all of
23 that marital property income from the gross income of the person.

24 **SECTION 9.** 71.10 (6m) (c) of the statutes is created to read:

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1 71.10 (6m) (c) A person who seeks relief from liability under par. (a) shall apply
2 for relief with the department as provided under sub. (6) (e).

3 **SECTION 10.** 71.22 (5m) of the statutes is created to read:

4 71.22 (5m) Notwithstanding subs. (4) and (4m), a qualified retirement fund for
5 a taxable year for federal income tax purposes is a qualified retirement fund for the
6 taxable year for purposes of this subchapter.

7 **SECTION 11.** 71.34 (1m) of the statutes is created to read:

8 71.34 (1m) Notwithstanding sub. (1g), a qualified retirement fund for a taxable
9 year for federal income tax purposes is a qualified retirement fund for the taxable
10 year for purposes of this subchapter.

11 **SECTION 12.** 71.42 (2m) of the statutes is created to read:

12 71.42 (2m) Notwithstanding sub. (2), a qualified retirement fund for a taxable
13 year for federal income tax purposes is a qualified retirement fund for the taxable
14 year for purposes of this subchapter.

15 **SECTION 13.** 71.65 (5) (a) 1. of the statutes is amended to read:

16 71.65 (5) (a) 1. Thirty days for filing a wage statement under sub. (1) or an
17 annual reconciliation report under sub. (3) (a) or (d).

18 **SECTION 14.** 71.80 (18) of the statutes is amended to read:

19 71.80 (18) **TIMELY FILING DEFINED.** Documents and payments required or
20 permitted by this chapter that are mailed shall be considered furnished, reported,
21 filed or made on time, if mailed in a properly addressed envelope, with postage duly
22 prepaid, which envelope is postmarked, or marked or recorded electronically as
23 provided under section 7502 (f) (2) (c) of the Internal Revenue Code, before midnight
24 of the date prescribed for such furnishing, reporting, filing or making, provided such
25 document or payment is actually received by the department or at the destination

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SECTION 14

1 that the department or the department of administration prescribes within 5 days
2 of such prescribed date. Documents and payments that are not mailed are timely if
3 they are received on or before the due date by the department or at the destination
4 that the department or the department of administration prescribes. For purposes
5 of this subsection, "mailed" includes delivery by a delivery service designated under
6 section 7502 (f) of the Internal Revenue Code.

7 ~~SECTION 15. 71.80 (19) (b) of the statutes is repealed.~~

8 SECTION 16. 72.23 of the statutes is renumbered 72.23 (1).

9 SECTION 17. 72.23 (2) of the statutes is created to read:

10 72.23 (2) The department or circuit court may waive interest on any additional
11 tax arising from the discovery of property omitted in the inventory of total assets or
12 in the original tax determination, if due diligence was exercised in determining the
13 assets.

14 SECTION 18. 72.30 (1m) of the statutes is created to read:

15 72.30 (1m) WHOLE DOLLAR AMOUNTS. Section 71.80 (19), as it applies to a tax
16 return filed under ch. 71, applies to a tax return filed under sub. (1).

17 SECTION 19. 73.01 (4) (a) of the statutes is amended to read:

18 73.01 (4) (a) Subject to the provisions for judicial review contained in s. 73.015,
19 the commission shall be the final authority for the hearing and determination of all
20 questions of law and fact arising under sub. (5) and s. 72.86 (4), 1985 stats., and ss.
21 70.38 (4) (a), 70.397, 70.64, and 70.995 (8), s. 76.38 (12) (a), 1993 stats., ss. 76.39 (4)
22 (c), 76.48 (6), 76.91, 77.26 (3), 77.59 (5m) and (6) (b), 78.01, 78.22, 78.40, 78.555,
23 139.02, 139.03, 139.06, 139.31, 139.315, 139.33, 139.76, 139.78, 341.405, and 341.45,
24 subch. XIV of ch. 71, and subch. VII of ch. 77. Whenever with respect to a pending
25 appeal there is filed with the commission a stipulation signed by the department of

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1 revenue and the adverse party, under s. 73.03 (25), or the department of
2 transportation and the adverse party agreeing to an affirmance, modification, or
3 reversal of the department of revenue's or department of transportation's position
4 with respect to some or all of the issues raised in the appeal, the commission shall
5 enter an order affirming or modifying in whole or in part, or canceling the assessment
6 appealed from, or allowing in whole or in part or denying the petitioner's refund
7 claim, as the case may be, pursuant to and in accordance with the stipulation filed.
8 No responsibility shall devolve upon the commission, respecting the signing of an
9 order of dismissal as to any pending appeal settled by the department of revenue or
10 the department of transportation without the approval of the commission.

11 **SECTION 20.** 73.13 of the statutes is created to read:

12 **73.13 Reducing nondelinquent taxes.** (1) In this section:

13 (a) "Department" means the department of revenue.

14 (b) "Tax" means an amount that is owed to this state under s. 66.0615 (1m) (f)
15 3. or ch. 71, 72, 76, 77, 78, or 139, and that is not delinquent.

16 (2) (a) A taxpayer may petition the department to reduce the taxpayer's taxes,
17 including the costs, penalties, and interest related to the taxpayer's taxes. The
18 petition shall set forth a sworn statement of the taxpayer and shall be in a form that
19 the department prescribes. The department may examine the taxpayer under oath
20 about the petition and may require the taxpayer to provide the department with
21 financial statements and any other information requested by the department that
22 is related to the petition.

23 (b) If the department determines that the taxpayer is unable to pay the taxes,
24 costs, penalties, and interest in full, the department shall determine the amount that
25 the taxpayer is able to pay and shall enter an order reducing the taxes in accordance

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1 with the department's determination. The order shall provide either that the order
2 is effective only if the reduced taxes are paid in full within 10 days from the date on
3 which the order is issued or that the order is effective only if the reduced taxes are
4 paid according to a payment schedule that the department determines. The
5 department or its collection agents, upon receipt of the order, shall accept payment
6 in accordance with the order. Upon payment of the reduced taxes, the department
7 shall credit the unpaid portion of the principal amount of the taxes and record the
8 unpaid amount of costs, penalties, and interest accrued to the date of the order.

9 (c) If within 3 years from either the date of the order under par. (b) or the date
10 of the final payment according to a payment schedule as determined under par. (b),
11 whichever is later, the department ascertains that the taxpayer has an income or
12 owns property sufficient to enable the taxpayer to pay the unpaid portion of the
13 principal amount of the taxes due, including the costs, penalties, and interest
14 recorded under par. (b), the department shall reopen the order under par. (b) and
15 order the taxpayer to pay in full the unpaid portion of the principal amount of the
16 taxes due, including the costs, penalties, and interest recorded under par. (b). Before
17 the entry of the order for payment, the department shall send a written notice to the
18 taxpayer, by certified mail, advising the taxpayer of the department's intention to
19 reopen the order under par. (b) and fixing a time and place for the appearance of the
20 taxpayer, if the taxpayer desires a hearing. If the department determines that the
21 taxpayer is able to pay the unpaid portion of the principal amount of the taxes due,
22 including the costs, penalties, and interest recorded under par. (b), the department
23 shall enter the order for payment in full. The unpaid portion of the principal amount
24 of the taxes due, including the costs, penalties, and interest recorded under par. (b),
25 shall be due and payable immediately upon entry of the order for payment in full and

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1 shall thereafter be subject to the interest under s. 71.82 (2), as that subsection
2 applies to delinquent income and franchise taxes under s. 71.82, and to the
3 delinquent account fee under s. 73.03 (33m).

4 ~~SECTION 21. 77.58 (3) (c) of the statutes is created to read:~~

5 ~~77.58 (3) (c) Section 71.80 (19), as it applies to a tax return filed under ch. 71,~~
6 ~~applies to a tax return filed under this section.~~

7 **SECTION 22.** 77.59 (4) (c) of the statutes is renumbered 77.59 (5m) and amended
8 to read:

9 **77.59 (5m)** A seller who receives a refund ~~under par. (a) or (b)~~ of taxes that the
10 seller has collected from buyers, who collects amounts as taxes erroneously from
11 buyers, or who is entitled to a refund that is offset under sub. (5), shall return submit
12 the taxes and related interest to the buyers from whom the taxes were collected. The,
13 or to the department if the seller cannot locate the buyers, within 90 days after the
14 date of the refund, after the date of the offset, or after discovering that the seller has
15 collected taxes erroneously from the buyers. If the seller does not submit the taxes
16 and related interest to the department or the buyers within that period, the seller
17 shall return submit to the department any part of a refund or taxes that the seller
18 does not return submit to a buyer or to the department along with a penalty of 25%
19 of the amount not returned or submitted or, in the case of fraud, a penalty equal to
20 the amount not returned in the case of fraud submitted. A person who collects
21 amounts as taxes erroneously from buyers for a real property construction activity
22 or nontaxable service may reduce the taxes and interest that he or she is required
23 to submit to the buyer or to the department under this subsection for that activity
24 or service by the amount of tax and interest subsequently due and paid on the sale

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SECTION 22

1 of or the storage, use, or other consumption of tangible personal property that is used
2 by the person in that activity or service and transferred to the buyer.

3 **SECTION 23.** 77.59 (5) of the statutes is amended to read:

4 77.59 (5) The department may offset the amount of any refund for a period,
5 together with interest on the refund, against deficiencies for another period, and
6 against penalties and interest on the deficiencies, or against any amount of whatever
7 kind, due and owing on the books of the department from the person ~~claiming~~ who
8 is entitled to the refund. If the refund is to be paid to a buyer, the department may
9 also set off amounts in the manner in which it sets off income tax and franchise tax
10 refunds under s. 71.93 and may set off amounts for child support or maintenance or
11 both in the manner in which it sets off income taxes under ss. 49.855 and 71.93 (3),
12 (6) and (7).

13 **SECTION 24.** 77.61 (14) of the statutes is amended to read:

14 77.61 (14) Documents and payments required or permitted under this
15 subchapter that are mailed are timely furnished, filed or made if they are mailed in
16 a properly addressed envelope with the postage duly prepaid, if the envelope is
17 postmarked, or marked or recorded electronically as provided under section 7502 (f)
18 (2) (c) of the Internal Revenue Code, before midnight of the due date and if the
19 document or payment is received by the department, or at the destination that the
20 department prescribes, within 5 days after the prescribed date. Documents and
21 payments that are not mailed are timely if they are received on or before the due date
22 by the department or at the destination that the department designates. For
23 purposes of this subsection, "mailed" includes delivery by a delivery service
24 designated under section 7502 (f) of the Internal Revenue Code.

25 ~~**SECTION 25.** 77.9941 (4) of the statutes is amended to read:~~

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~~77.9941 (4) Sections 77.72 (1), (2) (a) and (3) (a), 77.73, 77.74, 77.75, 77.76 (1), (2) and (4), 77.77 (1) and (2), 77.785 (1) and 77.79, as they apply to the taxes under subch. V, apply to the tax under this subchapter. Section 77.58 (3) (c), as it applies to the taxes under subch. III, applies to the tax under this subchapter.~~

~~SECTION 26. 77.9964 (2) of the statutes is amended to read:~~

~~77.9964 (2) Except as provided in s. 77.9961 (4), sections ss. 71.74 (1) to (3), (7) and (9), 71.75 (1), (2), (6), (7), (9) and (10), 71.77 (1) and (4) to (8), 71.78 (1) to (4) and (5) to (8), 71.80 (1) (a) and (b), (4) to (6), (8) to (12), (14), and (17) and (18) to (19), 71.82 (1) and (2) (a) and (b), 71.83 (1) (a) 1. and 2. and (b) 1., 2. and 6., (2) (a) 1. to 3. and (b) 1. to 3. and (3), 71.87, 71.88, 71.89, 71.90, 71.91 (1) (a), (2) and (4) to (6) and 71.93, as they apply to the taxes under ch. 71, apply to the fees under this subchapter.~~

SECTION 27. 78.22 (4) of the statutes is amended to read:

78.22 (4) LATE FILING FEE. Any person who fails to file a motor vehicle fuel floor tax return when due shall pay a late filing fee of \$10. A return that is mailed is filed in time if it is mailed in a properly addressed envelope with 1st-class postage duly prepaid and the envelope is officially postmarked, or marked or recorded electronically as provided under section 7502 (f) (2) (c) of the Internal Revenue Code, on the date due and the return is actually received by the department or at the destination that the department prescribes within 5 days of the due date. A return that is not mailed is timely if it is received on or before the due date by the department or at the destination that the department prescribes. For purposes of this subsection, "mailed" includes delivery by a delivery service designated under section 7502 (f) of the Internal Revenue Code.

SECTION 28. 78.39 (5d) of the statutes is created to read:

78.39 (5d) "Pay" has the meaning given in s. 78.005 (13b).

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SECTION 29

1 **SECTION 29.** 78.39 (5m) of the statutes is created to read:

2 78.39 (5m) “Sign” has the meaning given in s. 78.005 (13r).

3 ~~**SECTION 30.** 78.68 (10) of the statutes is amended to read:~~

4 ~~78.68 (10) Except as provided in ss. 78.19, 78.20 (2) and 78.75 (1m) (b), s. 71.75~~
5 ~~(2), (4) to (7) and (10), as it applies to the taxes under ch. 71, applies to the taxes under~~
6 ~~this chapter. Section 71.74 (13), as it applies to refunds of the taxes under ch. 71,~~
7 ~~applies to the refund of the taxes under this chapter and s. 71.80 (19), as it applies~~
8 ~~to tax returns filed under ch. 71, applies to returns filed under this chapter.~~

9 **SECTION 31.** 139.03 (2x) (d) of the statutes is amended to read:

10 139.03 (2x) (d) *Late filing fee.* Any person who fails to file a floor tax return
11 when due shall pay a late filing fee of \$10. A return that is mailed shall be considered
12 filed in time if it is mailed in a properly addressed envelope with ~~1st~~ class postage
13 duly prepaid, if the envelope is officially postmarked, or marked or recorded
14 electronically as provided under section 7502 (f) (2) (c) of the Internal Revenue Code,
15 on the date due and if the return is actually received by the department or at the
16 destination that the department prescribes within 5 days of the due date. A return
17 that is not mailed is timely if it is received on or before the due date by the department
18 or at the destination that the department prescribes. For purposes of this paragraph,
19 “mailed” includes delivery by a delivery service designated under section 7502 (f) of
20 the Internal Revenue Code.

21 **SECTION 32.** 139.05 (2a) of the statutes is amended to read:

22 139.05 (2a) The payments and returns under subs. (1) and (2) that are mailed
23 are furnished, filed or made on time, and payments therein referred to are timely, if
24 mailed in a properly addressed envelope, with ~~first~~ class postage duly prepaid, which
25 envelope is officially postmarked, or marked or recorded electronically as provided

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1 under section 7502 (f) (2) (c) of the Internal Revenue Code, before midnight on the
2 date prescribed for such furnishing, filing or making of such payment, provided such
3 statement, return or payment is actually received by the secretary of revenue or at
4 the destination that the department prescribes within 5 days of the prescribed date.
5 Payments and returns that are not mailed are timely if they are received on or before
6 the due date by the department or at the destination that the department prescribes.
7 For purposes of this subsection, "mailed" includes delivery by a delivery service
8 designated under section 7502 (f) of the Internal Revenue Code.

9 **SECTION 33.** 139.11 (2r) of the statutes is created to read:
10 139.11 (2r) WHOLE DOLLAR AMOUNTS. Section 71.80 (19), as it applies to a tax
11 return filed under ch. 71, applies to a report filed under this subchapter.

12 **SECTION 34.** 139.315 (4) of the statutes is amended to read:
13 139.315 (4) LATE FILING FEE. Any person who fails to file a cigarette inventory
14 tax return when due shall pay a late filing fee of \$10. A return that is mailed is timely
15 if it is mailed in a properly addressed envelope with 1st class postage prepaid, if the
16 envelope is postmarked, or marked or recorded electronically as provided under
17 section 7502 (f) (2) (c) of the Internal Revenue Code, on the due date and if the return
18 is actually received by the department or at the destination that the department
19 prescribes within 5 days of the due date. A return that is not mailed is timely if it
20 is received on or before the due date by the department or at the destination that the
21 department prescribes. For purposes of this subsection, "mailed" includes delivery
22 by a delivery service designated under section 7502 (f) of the Internal Revenue Code.

23 **SECTION 35.** 139.38 (2r) of the statutes is created to read:
24 139.38 (2r) Section 71.80 (19), as it applies to a tax return filed under ch. 71,
25 applies to a report filed under this subchapter.

BILL**SECTION 36**

SECTION 36. 139.38 (5) of the statutes is amended to read:

139.38 (5) If any permittee fails to file a report when due the permittee shall be required to pay a late filing fee of \$10. A report that is mailed is filed in time if it is mailed in a properly addressed envelope with ~~first-class~~ postage duly prepaid, which envelope is officially postmarked, or marked or recorded electronically as provided under section 7502 (f) (2) (c) of the Internal Revenue Code, on the date due, and if the report is actually received by the secretary or at the destination that the department prescribes within 5 days of the due date. A report that is not mailed is timely if it is received on or before the due date by the secretary or at the destination that the department prescribes. For purposes of this subsection, "mailed" includes delivery by a delivery service designated under section 7502 (f) of the Internal Revenue Code.

SECTION 37. 139.75 (9m) of the statutes is created to read:

139.75 (9m) "Sign" has the meaning given in s. 139.01 (9m).

SECTION 38. ~~139.82 (2r) of the statutes is created to read:~~

~~139.82 (2r) Section 71.80 (19), as it applies to a tax return filed under ch. 71, applies to a report filed under this subchapter.~~

SECTION 39. Initial applicability.

(1) REFUNDS AND TAXES COLLECTED ERRONEOUSLY. The treatment of sections 50.14 (4), 73.01 (4) (a), and 77.59 (4) (c) and (5) of the statutes first applies to notices of refunds or notices of amounts due dated, offsets taken, and the discovery of amounts collected erroneously as taxes on the effective date of this subsection even if the notices, offsets, and amounts relate to sales that occurred after August 31, 1994.

BILL

(2) **MARRIED PERSONS' TAX LIABILITY.** The treatment of section 71.10 (6) (a) and (b) and (6m) (a) of the statutes first applies to tax liability that arises on the effective date of this subsection or that remains unpaid on the effective date of this subsection.

(3) RECONCILIATION REPORTS. The treatment of section 71.65 (5) (a) 1. of the statutes first applies to reconciliation reports that are due on January 31, 2004.

(4) INCOME TAX FILING DEADLINES FOR ELECTRONIC RETURNS. The treatment of section 71.03 (6) (a) and (8) (b) of the statutes takes effect only if the secretary of revenue issues a written certification to the governor that the federal government has extended the income tax filing deadline for electronically filed individual income tax returns in a way that is similar to the changes made by SECTIONS 3 and 4 of this act.

(END)

2003-2004 DRAFTING INSERT
FROM THE
LEGISLATIVE REFERENCE BUREAU

LRB-0641/7 ins

LRB

.....

INS A

as affected by
2003 Wisconsin Act 33¹
(5m)

SECTION 1. 50.14 (4) of the statutes is amended to read:

50.14 (4) Sections 77.59 (1) to ~~(5)~~ (6) (intro.), (a) and (c) and (7) to (10), 77.60 (1) to (7), (9) and (10), 77.61 (9) and (12) to (14) and 77.62, as they apply to the taxes under subch. III of ch. 77, apply to the assessment under this section, except that the amount of any assessment collected under s. 77.59 (7) in excess of \$14,300,000 in fiscal year 2003-04, in excess of \$13,800,000 in fiscal year 2004-05, and, beginning July 1, 2005, in excess of 45% in each fiscal year shall be deposited in the Medical Assistance trust fund.

History: 1991 a. 269; 1993 a. 16; 1995 a. 27; 1997 a. 114; 2003 a. 33.

Kreye, Joseph

From: Gates-Hendrix, Sherrie
Sent: Thursday, January 29, 2004 3:03 PM
To: Kreye, Joseph
Subject: taxpayer friendly addition



TPr Friendly-TAX
filing.doc

Joe -- could you add this item to the "taxpayer friendly" bill? LRB 641/7

I'm hoping that we will have the OK to have Mickey Lehman's office drafting this for us soon, so with luck you may see the same request from him soon as well.

thanks -- stay warm.....

**Legislative Proposal Summary
Wisconsin Department of Revenue
(Division)**

(Nov. 18, 2003)

**TITLE: ADD EARNED INCOME TAX CREDIT TO EXCEPTIONS TO TAX APPEALS
COMMISSION \$25 FILING FEE**

DESCRIPTION OF CURRENT LAW AND PROBLEM

Section 71.88(2)(b) Provides eight exceptions to the \$25 filing fee required to appeal DOR decisions to the Tax Appeals Commission. If the appeal is of a redetermination of Farmland Tax Relief Credit, Married Persons Credit, Community Development Finance Credit, Homestead Tax Credit or Farmland Preservation Tax Credit, the filing fee is not required. The list of exceptions does not include DOR redeterminations of the Earned Income Tax Credit. Eligibility for the state earned income credit is determined by eligibility for the federal credit. For tax year 2003, eligibility was limited to single filers with one child whose earned income or AGI was less than \$29,666 (\$30,666, if filing a joint return). A single filer with more than one qualifying child, was eligible only if earned income was under \$33,692 (\$34,692, if filing a joint return).

RECOMMENDATION FOR ACTION

Add section 71.07(9e), the Earned Income Tax Credit to the list of exceptions to the \$25 TAC filing fee provided in s. 71.88(2)(b). Include this provision as part of the department's "taxpayer-friendly" legislation. (2003 session LRB0641)

ADMINISTRATIVE IMPACT

Minimal. The department makes approximately 3500 Earned Income Tax Credit adjustments annually. The adjustments occur through the on-line processing system or through Office Audit action. An estimated 500-600 of the adjustments are appealed by taxpayers. Many of these are resolved through Audit, Residency Review, etc. But, 110 are handled directly by the Resolutions Office. 26 petitions filed with the TAC had the earned income tax credit as an issue, and only three of the petitions dealt exclusively with the Earned Income Credit.

The Resolutions Office reports similar experience with adjustments to the Homestead Tax Credit. 25-30 taxpayers petitioned the TAC regarding a Homestead Tax Credit, and the resolutions Office dealt with approximately 100 taxpayer appeals.

FAIRNESS /TAX EQUITY

The Earned Income Tax credit is a credit for lower income workers with children. If the statutes are going to provide any exception to the \$25 fee required to appeal a decision

to the Tax Appeals Commission, it would be reasonable to include taxpayers applying for the Earned Income Credit among those eligible to be exempt from the fee.

IMPACT ON ECONOMIC DEVELOPMENT

NONE

FISCAL EFFECT

none

DRAFTING INSTRUCTIONS

1. APPEALS--Add s. 71.07(9e) to the tax credits listed in s. 71.88(2)(b).

EFFECTIVE DATE AND/OR INITIAL APPLICABILITY

Thirty days after publication

INTERESTED/AFFECTED PARTIES

Tax Appeals Commission

DOR CONTACT PERSON

(Tom Ourada,
266-8875
(tourada@dor.state.wi.us



State of Wisconsin
2003 - 2004 LEGISLATURE

LRB-06417
JK:jld&cs:rs

2003 BILL

RM and R

in 1-29-04

500N

redetermination
appeal of redetermination of
earned income credits,
tax

Regen

1 AN ACT *to renumber 72.23; to renumber and amend 77.59 (4) (c); to amend*
2 50.14 (4), 71.03 (6) (a), 71.03 (8) (b), 71.10 (6) (a), 71.10 (6) (b), 71.10 (6m) (a),
3 71.65 (5) (a) 1., 71.80 (18), 73.01 (4) (a), 77.59 (5), 77.61 (14), 78.22 (4), 139.03
4 (2x) (d), 139.05 (2a), 139.315 (4) and 139.38 (5); and *to create* 71.01 (7n), 71.10
5 (6) (e), 71.10 (6m) (c), 71.22 (5m), 71.34 (1m), 71.42 (2m), 72.23 (2), 73.13, 78.39
6 (5d), 78.39 (5m) and 139.75 (9m) of the statutes; **relating to:** the liability of
7 married persons filing a joint income tax return, the payment of the alternate
8 fuel tax and the tobacco products tax, estate tax interest, qualified retirement
9 systems, reducing nondelinquent taxes, extending the time for filing a tax
10 reconciliation report, delivering tax-related documents and related payments,
11 granting rule-making authority, and providing a penalty.

Analysis by the Legislative Reference Bureau

REDUCING TAXES

Under current law, any taxpayer may petition the Department of Revenue (DOR) to reduce delinquent taxes, including any applicable costs, penalties, and

BILL

interest. If DOR determines that the taxpayer is unable to pay in full the amount due, based on an examination of the taxpayer under oath, the taxpayer's financial statements, and any other information required by DOR, DOR determines the amount that the taxpayer is able to pay and then enters an order reducing the taxes, costs, penalties, and interest owed by the taxpayer.

If within three years from either the date on which DOR enters the order that reduces the taxpayer's taxes or the date of the final payment according to a payment schedule determined by DOR, whichever is later, DOR determines that the taxpayer has an income or owns property that is sufficient to enable the taxpayer to pay the remainder of the original delinquent taxes, including costs, penalties, and interest, DOR must reopen the order and order the payment in full of such taxes, costs, penalties, and interest.

This bill expands current law so that DOR is authorized to reduce any taxes, costs, penalties, and interest that are due from a taxpayer, regardless of whether the taxes, costs, penalties, and interest are delinquent.

INCOME AND FRANCHISE TAXES

Under current law, spouses that file a joint income tax return are both liable for the payment of any tax related to that return. However, DOR may relieve a person of any tax liability related to a joint return, in a manner specified by the Internal Revenue Code and adopted by this state. Generally, DOR may relieve a person of any tax liability related to a joint return if the person's spouse did not notify the person of any tax liability or understatement of taxes related to the joint return. This bill corrects an outdated reference to the sections of the Internal Revenue Code that relate to a spouse's tax liability for a joint income tax return. The bill also requires a spouse to apply for relief from tax liability within two years from the date on which DOR begins collection activities on the spouse's tax liability or within two years from the effective date of the provision, whichever is later.

Under current law, an employer is required to deduct and withhold state income taxes from an employee's pay and to deposit those taxes with DOR on a quarterly basis. An employer must also file a tax reconciliation report with DOR on an annual basis. Under current law, DOR cannot grant an employer an extension for filing such a report. This bill allows DOR to grant a 30-day extension for filing an annual reconciliation report.

This bill clarifies that a qualified retirement fund for federal income tax purposes is a qualified retirement fund for state income tax purposes.

SALES AND USE TAXES

Under current law, if a seller makes a claim for a refund of sales taxes or use taxes and the claim is honored, the seller is required to pass along the refund and related interest to the buyers and to submit to DOR the portion of the refund that could not be passed on, along with a penalty. Under current law, if a seller receives a sales or use tax refund as the result of an audit, the seller is not required to submit the refund and related interest to the buyers. Also, a seller is not required to submit to the buyers sales or use taxes that are collected erroneously.

This bill requires a seller who receives any refund of sales or use taxes, or who collects sales or use taxes erroneously, to submit such a refund or taxes to the buyer,

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or to DOR if the buyer cannot be located, within 90 days after receiving a refund or after discovering that the seller has collected taxes erroneously. Any portion of a refund or taxes not submitted to the buyer, or to DOR if the buyer cannot be located, within that 90 days must be submitted to DOR, along with a penalty.

OTHER TAXATION

Under current law, an estate tax that is not paid on the date on which it is due is subject to interest at the rate of 12% a year from the date of the decedent's death. Under the bill, DOR may waive the interest imposed on any additional estate taxes that arise from the discovery of property omitted in the inventory of the estate's total assets or in the original tax determination, if due diligence was exercised in determining the assets.

Under current law, generally, a tax-related document or payment that DOR must receive by a specified date is timely received, if the document or payment is mailed in a properly addressed envelope; the sender pays the postage; the envelope is postmarked on the day that the document or payment is due; and the document or payment is received within five days from the date on which the document or payment is due.

Under this bill, mailing a tax-related document or payment includes using a delivery service that has been approved by the Internal Revenue Service, for federal tax purposes.

For further information see the *state and local* fiscal estimate, which will be printed as an appendix to this bill.

The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:

SECTION 1. 50.14 (4) of the statutes, as affected by 2003 Wisconsin Act 33, is amended to read:

50.14 (4) Sections 77.59 (1) to ~~(5)~~ (5m), (6) (intro.), (a) and (c) and (7) to (10), 77.60 (1) to (7), (9) and (10), 77.61 (9) and (12) to (14) and 77.62, as they apply to the taxes under subch. III of ch. 77, apply to the assessment under this section, except that the amount of any assessment collected under s. 77.59 (7) in excess of \$14,300,000 in fiscal year 2003–04, in excess of \$13,800,000 in fiscal year 2004–05, and, beginning July 1, 2005, in excess of 45% in each fiscal year shall be deposited in the Medical Assistance trust fund.

SECTION 2. 71.01 (7n) of the statutes is created to read:

Under current law, a person may appeal DOR's redetermination of various tax credits without paying a \$25 filing fee. Under this bill, a person may appeal DOR's redetermination of an earned income tax credit without paying the filing fee.

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1 71.01 (7n) Notwithstanding sub. (6), a qualified retirement fund for a taxable
2 year for federal income tax purposes is a qualified retirement fund for the taxable
3 year for purposes of this subchapter.

4 **SECTION 3.** 71.03 (6) (a) of the statutes is amended to read:

5 71.03 (6) (a) Reports required under this section shall be made on or before
6 April 15, or April 30 if the person files an electronic return, following the close of a
7 year referred to in sub. (2) (a), or if such person's fiscal year is other than the calendar
8 year then on or before the 15th day, or the last day if the person files an electronic
9 return, of the 4th month following the close of such fiscal year, or if the return is for
10 less than a full taxable year on the date applicable for federal income taxes under the
11 ~~internal revenue code~~ Internal Revenue Code, to the department of revenue, in the
12 manner and form prescribed by the department of revenue, whether notified to do
13 so or not. Such persons shall be subject to the same penalties for failure to report as
14 those who receive notice. If the taxpayer is unable to make his or her own return,
15 the return shall be made by a duly authorized agent or by the guardian or other
16 person charged with the care of the person or property of such taxpayer.

17 **SECTION 4.** 71.03 (8) (b) of the statutes is amended to read:

18 71.03 (8) (b) The final payment of taxes on incomes of persons other than
19 corporations who file on a calendar year basis shall be made on or before April 15,
20 or April 30 if the person files an electronic return, following the close of the calendar
21 year, except for persons electing to have the department compute their tax under sub.
22 (4). If the return of a person other than a corporation is made on the basis of a fiscal
23 year, such final payment shall be made on or before the 15th day, or the last day if
24 the person files an electronic return, of the 4th month following the close of such fiscal

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1 year, except for persons electing to have the department compute their tax under sub.
2 (4).

3 **SECTION 5.** 71.10 (6) (a) of the statutes is amended to read:

4 71.10 (6) (a) *Joint returns.* Persons filing a joint return are jointly and severally
5 liable for the tax, interest, penalties, fees, additions to tax and additional
6 assessments under this chapter applicable to the return. A person shall be relieved
7 of liability in regard to a joint return in the manner specified in section ~~6013 (e)~~ 6015
8 ~~(a) to (d) and (f) of the internal revenue code, notwithstanding the amount or~~
9 ~~percentage of the understatement~~ Internal Revenue Code.

10 **SECTION 6.** 71.10 (6) (b) of the statutes is amended to read:

11 71.10 (6) (b) *Separate returns.* A spouse filing a separate return may be
12 relieved of liability for the tax, interest, penalties, fees, additions to tax and
13 additional assessments under this chapter ~~with regard to unreported marital~~
14 ~~property income~~ in the manner specified in section 66 (c) of the ~~internal revenue code~~
15 Internal Revenue Code. The department may not apply ch. 766 in assessing a
16 taxpayer with respect to marital property income the taxpayer did not report if that
17 taxpayer failed to notify the taxpayer's spouse about the amount and nature of the
18 income before the due date, including extensions, for filing the return for the taxable
19 year in which the income was derived. The department shall include all of that
20 marital property income in the gross income of the taxpayer and exclude all of that
21 marital property income from the gross income of the taxpayer's spouse.

22 **SECTION 7.** 71.10 (6) (e) of the statutes is created to read:

23 71.10 (6) (e) *Application for relief.* A person who seeks relief from liability
24 under par. (a) or (b) shall apply for relief with the department, on a form prescribed
25 by the department, within 2 years after the date on which the department first

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1 begins collection activities after the effective date of this paragraph [revisor
2 inserts date].

3 **SECTION 8.** 71.10 (6m) (a) ✓ of the statutes is amended to read:

4 71.10 (6m) (a) A formerly married or remarried person filing a return for a
5 period during which the person was married may be relieved of liability for the tax,
6 interest, penalties, fees, additions to tax and additional assessments under this
7 chapter ~~for unreported marital property income~~ from that period as if the person
8 were a spouse under section 66 (c) of the ~~internal revenue code~~ Internal Revenue
9 Code. The department may not apply ch. 766 in assessing the former spouse of the
10 person with respect to marital property income that the former spouse did not report
11 if that former spouse failed to notify the person about the amount and nature of the
12 income before the due date, including extensions, for filing the return for the taxable
13 year during which the income was derived. The department shall include all of that
14 marital property income in the gross income of the former spouse and exclude all of
15 that marital property income from the gross income of the person.

16 **SECTION 9.** 71.10 (6m) (c) ✓ of the statutes is created to read:

17 71.10 (6m) (c) A person who seeks relief from liability under par. (a) shall apply
18 for relief with the department as provided under sub. (6) (e).

19 **SECTION 10.** 71.22 (5m) ✓ of the statutes is created to read:

20 71.22 (5m) Notwithstanding subs. (4) and (4m), a qualified retirement fund for
21 a taxable year for federal income tax purposes is a qualified retirement fund for the
22 taxable year for purposes of this subchapter.

23 **SECTION 11.** 71.34 (1m) ✓ of the statutes is created to read:

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1 71.34 (1m) Notwithstanding sub. (1g), a qualified retirement fund for a taxable
2 year for federal income tax purposes is a qualified retirement fund for the taxable
3 year for purposes of this subchapter.

4 SECTION 12. 71.42 (2m) of the statutes is created to read:

5 71.42 (2m) Notwithstanding sub. (2), a qualified retirement fund for a taxable
6 year for federal income tax purposes is a qualified retirement fund for the taxable
7 year for purposes of this subchapter.

8 SECTION 13. 71.65 (5) (a) 1. of the statutes is amended to read:

9 71.65 (5) (a) 1. Thirty days for filing a wage statement under sub. (1) or an
10 annual reconciliation report under sub. (3) (a) or (d).

11 SECTION 14. 71.80 (18) of the statutes is amended to read:

12 71.80 (18) TIMELY FILING DEFINED. Documents and payments required or
13 permitted by this chapter that are mailed shall be considered furnished, reported,
14 filed or made on time, if mailed in a properly addressed envelope, with postage duly
15 prepaid, which envelope is postmarked, or marked or recorded electronically as
16 provided under section 7502 (f) (2) (c) of the Internal Revenue Code, before midnight
17 of the date prescribed for such furnishing, reporting, filing or making, provided such
18 document or payment is actually received by the department or at the destination
19 that the department or the department of administration prescribes within 5 days
20 of such prescribed date. Documents and payments that are not mailed are timely if
21 they are received on or before the due date by the department or at the destination
22 that the department or the department of administration prescribes. For purposes
23 of this subsection, "mailed" includes delivery by a delivery service designated under
24 section 7502 (f) of the Internal Revenue Code.

25 SECTION 15. 72.23 of the statutes is renumbered 72.23 (1).

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✓
1 **SECTION 16.** 72.23 (2) of the statutes is created to read:

2 72.23 (2) The department or circuit court may waive interest on any additional
3 tax arising from the discovery of property omitted in the inventory of total assets or
4 in the original tax determination, if due diligence was exercised in determining the
5 assets.

✓
6 **SECTION 17.** 73.01 (4) (a) of the statutes is amended to read:

7 73.01 (4) (a) Subject to the provisions for judicial review contained in s. 73.015,
8 the commission shall be the final authority for the hearing and determination of all
9 questions of law and fact arising under sub. (5) and s. 72.86 (4), 1985 stats., and ss.
10 70.38 (4) (a), 70.397, 70.64, and 70.995 (8), s. 76.38 (12) (a), 1993 stats., ss. 76.39 (4)
11 (c), 76.48 (6), 76.91, 77.26 (3), 77.59 (5m) and (6) (b), 78.01, 78.22, 78.40, 78.555,
12 139.02, 139.03, 139.06, 139.31, 139.315, 139.33, 139.76, 139.78, 341.405, and 341.45,
13 subch. XIV of ch. 71, and subch. VII of ch. 77. Whenever with respect to a pending
14 appeal there is filed with the commission a stipulation signed by the department of
15 revenue and the adverse party, under s. 73.03 (25), or the department of
16 transportation and the adverse party agreeing to an affirmance, modification, or
17 reversal of the department of revenue's or department of transportation's position
18 with respect to some or all of the issues raised in the appeal, the commission shall
19 enter an order affirming or modifying in whole or in part, or canceling the assessment
20 appealed from, or allowing in whole or in part or denying the petitioner's refund
21 claim, as the case may be, pursuant to and in accordance with the stipulation filed.
22 No responsibility shall devolve upon the commission, respecting the signing of an
23 order of dismissal as to any pending appeal settled by the department of revenue or
24 the department of transportation without the approval of the commission.

✓
25 **SECTION 18.** 73.13 of the statutes is created to read:

BILL

1 **73.13 Reducing nondelinquent taxes.** (1) In this section:

2 (a) “Department” means the department of revenue.

3 (b) “Tax” means an amount that is owed to this state under s. 66.0615 (1m) (f)
4 3. or ch. 71, 72, 76, 77, 78, or 139, and that is not delinquent.

5 (2) (a) A taxpayer may petition the department to reduce the taxpayer’s taxes,
6 including the costs, penalties, and interest related to the taxpayer’s taxes. The
7 petition shall set forth a sworn statement of the taxpayer and shall be in a form that
8 the department prescribes. The department may examine the taxpayer under oath
9 about the petition and may require the taxpayer to provide the department with
10 financial statements and any other information requested by the department that
11 is related to the petition.

12 (b) If the department determines that the taxpayer is unable to pay the taxes,
13 costs, penalties, and interest in full, the department shall determine the amount that
14 the taxpayer is able to pay and shall enter an order reducing the taxes in accordance
15 with the department’s determination. The order shall provide either that the order
16 is effective only if the reduced taxes are paid in full within 10 days from the date on
17 which the order is issued or that the order is effective only if the reduced taxes are
18 paid according to a payment schedule that the department determines. The
19 department or its collection agents, upon receipt of the order, shall accept payment
20 in accordance with the order. Upon payment of the reduced taxes, the department
21 shall credit the unpaid portion of the principal amount of the taxes and record the
22 unpaid amount of costs, penalties, and interest accrued to the date of the order.

23 (c) If within 3 years from either the date of the order under par. (b) or the date
24 of the final payment according to a payment schedule as determined under par. (b),
25 whichever is later, the department ascertains that the taxpayer has an income or

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owns property sufficient to enable the taxpayer to pay the unpaid portion of the principal amount of the taxes due, including the costs, penalties, and interest recorded under par. (b), the department shall reopen the order under par. (b) and order the taxpayer to pay in full the unpaid portion of the principal amount of the taxes due, including the costs, penalties, and interest recorded under par. (b). Before the entry of the order for payment, the department shall send a written notice to the taxpayer, by certified mail, advising the taxpayer of the department's intention to reopen the order under par. (b) and fixing a time and place for the appearance of the taxpayer, if the taxpayer desires a hearing. If the department determines that the taxpayer is able to pay the unpaid portion of the principal amount of the taxes due, including the costs, penalties, and interest recorded under par. (b), the department shall enter the order for payment in full. The unpaid portion of the principal amount of the taxes due, including the costs, penalties, and interest recorded under par. (b), shall be due and payable immediately upon entry of the order for payment in full and shall thereafter be subject to the interest under s. 71.82 (2), as that subsection applies to delinquent income and franchise taxes under s. 71.82, and to the delinquent account fee under s. 73.03 (33m).

SECTION 19. 77.59 (4) (c) of the statutes is renumbered 77.59 (5m) and amended to read:

77.59 (5m) A seller who receives a refund ~~under par. (a) or (b)~~ of taxes that the seller has collected from buyers, who collects amounts as taxes erroneously from buyers, or who is entitled to a refund that is offset under sub. (5), shall return submit the taxes and related interest to the buyers from whom the taxes were collected. ~~The,~~ or to the department if the seller cannot locate the buyers, within 90 days after the date of the refund, after the date of the offset, or after discovering that the seller has

BILL

1 collected taxes erroneously from the buyers. If the seller does not submit the taxes
2 and related interest to the department or the buyers within that period, the seller
3 shall return submit to the department any part of a refund or taxes that the seller
4 does not return submit to a buyer or to the department along with a penalty of 25%
5 of the amount not returned or submitted or, in the case of fraud, a penalty equal to
6 the amount not returned in the case of fraud submitted. A person who collects
7 amounts as taxes erroneously from buyers for a real property construction activity
8 or nontaxable service may reduce the taxes and interest that he or she is required
9 to submit to the buyer or to the department under this subsection for that activity
10 or service by the amount of tax and interest subsequently due and paid on the sale
11 of or the storage, use, or other consumption of tangible personal property that is used
12 by the person in that activity or service and transferred to the buyer.

13 **SECTION 20.** 77.59 (5) of the statutes is amended to read:

14 77.59 (5) The department may offset the amount of any refund for a period,
15 together with interest on the refund, against deficiencies for another period, and
16 against penalties and interest on the deficiencies, or against any amount of whatever
17 kind, due and owing on the books of the department from the person claiming who
18 is entitled to the refund. If the refund is to be paid to a buyer, the department may
19 also set off amounts in the manner in which it sets off income tax and franchise tax
20 refunds under s. 71.93 and may set off amounts for child support or maintenance or
21 both in the manner in which it sets off income taxes under ss. 49.855 and 71.93 (3),
22 (6) and (7).

23 **SECTION 21.** 77.61 (14) of the statutes is amended to read:

24 77.61 (14) Documents and payments required or permitted under this
25 subchapter that are mailed are timely furnished, filed or made if they are mailed in

BILL**SECTION 21**

1 a properly addressed envelope with the postage duly prepaid, if the envelope is
2 postmarked, or marked or recorded electronically as provided under section 7502 (f)
3 (2) (c) of the Internal Revenue Code, before midnight of the due date and if the
4 document or payment is received by the department, or at the destination that the
5 department prescribes, within 5 days after the prescribed date. Documents and
6 payments that are not mailed are timely if they are received on or before the due date
7 by the department or at the destination that the department designates. For
8 purposes of this subsection, “mailed” includes delivery by a delivery service
9 designated under section 7502 (f) of the Internal Revenue Code.

10 **SECTION 22.** 78.22 (4) ✓ of the statutes is amended to read:

11 78.22 (4) LATE FILING FEE. Any person who fails to file a motor vehicle fuel floor
12 tax return when due shall pay a late filing fee of \$10. A return that is mailed is filed
13 in time if it is mailed in a properly addressed envelope with 1st-class postage duly
14 prepaid and the envelope is officially postmarked, or marked or recorded
15 electronically as provided under section 7502 (f) (2) (c) of the Internal Revenue Code,
16 on the date due and the return is actually received by the department or at the
17 destination that the department prescribes within 5 days of the due date. A return
18 that is not mailed is timely if it is received on or before the due date by the department
19 or at the destination that the department prescribes. For purposes of this subsection,
20 “mailed” includes delivery by a delivery service designated under section 7502 (f) of
21 the Internal Revenue Code.

22 **SECTION 23.** 78.39 (5d) ✓ of the statutes is created to read:

23 78.39 (5d) “Pay” has the meaning given in s. 78.005 (13b).

24 **SECTION 24.** 78.39 (5m) ✓ of the statutes is created to read:

25 78.39 (5m) “Sign” has the meaning given in s. 78.005 (13r).

BILL

✓
1 **SECTION 25.** 139.03 (2x) (d) of the statutes is amended to read:

2 139.03 (2x) (d) *Late filing fee.* Any person who fails to file a floor tax return
3 when due shall pay a late filing fee of \$10. A return that is mailed shall be considered
4 filed in time if it is mailed in a properly addressed envelope with 1st-class postage
5 duly prepaid, if the envelope is officially postmarked, or marked or recorded
6 electronically as provided under section 7502 (f) (2) (c) of the Internal Revenue Code,
7 on the date due and if the return is actually received by the department or at the
8 destination that the department prescribes within 5 days of the due date. A return
9 that is not mailed is timely if it is received on or before the due date by the department
10 or at the destination that the department prescribes. For purposes of this paragraph,
11 “mailed” includes delivery by a delivery service designated under section 7502 (f) of
12 the Internal Revenue Code.

✓
13 **SECTION 26.** 139.05 (2a) of the statutes is amended to read:

14 139.05 (2a) The payments and returns under subs. (1) and (2) that are mailed
15 are furnished, filed or made on time, and payments therein referred to are timely, if
16 mailed in a properly addressed envelope, with ~~first-class~~ postage duly prepaid, which
17 envelope is officially postmarked, or marked or recorded electronically as provided
18 under section 7502 (f) (2) (c) of the Internal Revenue Code, before midnight on the
19 date prescribed for such furnishing, filing or making of such payment, provided such
20 statement, return or payment is actually received by the secretary of revenue or at
21 the destination that the department prescribes within 5 days of the prescribed date.
22 Payments and returns that are not mailed are timely if they are received on or before
23 the due date by the department or at the destination that the department prescribes.
24 For purposes of this subsection, “mailed” includes delivery by a delivery service
25 designated under section 7502 (f) of the Internal Revenue Code.

BILL

✓
1 **SECTION 27.** 139.315 (4) of the statutes is amended to read:

2 139.315 (4) LATE FILING FEE. Any person who fails to file a cigarette inventory
3 tax return when due shall pay a late filing fee of \$10. A return that is mailed is timely
4 if it is mailed in a properly addressed envelope with ~~1st class~~ postage prepaid, if the
5 envelope is postmarked, or marked or recorded electronically as provided under
6 section 7502 (f) (2) (c) of the Internal Revenue Code, on the due date and if the return
7 is actually received by the department or at the destination that the department
8 prescribes within 5 days of the due date. A return that is not mailed is timely if it
9 is received on or before the due date by the department or at the destination that the
10 department prescribes. For purposes of this subsection, “mailed” includes delivery
11 by a delivery service designated under section 7502 (f) of the Internal Revenue Code.

✓
12 **SECTION 28.** 139.38 (5) of the statutes is amended to read:

13 139.38 (5) If any permittee fails to file a report when due the permittee shall
14 be required to pay a late filing fee of \$10. A report that is mailed is filed in time if
15 it is mailed in a properly addressed envelope with ~~first class~~ postage duly prepaid,
16 which envelope is officially postmarked, or marked or recorded electronically as
17 provided under section 7502 (f) (2) (c) of the Internal Revenue Code, on the date due,
18 and if the report is actually received by the secretary or at the destination that the
19 department prescribes within 5 days of the due date. A report that is not mailed is
20 timely if it is received on or before the due date by the secretary or at the destination
21 that the department prescribes. For purposes of this subsection, “mailed” includes
22 delivery by a delivery service designated under section 7502 (f) of the Internal
23 Revenue Code.

✓
24 **SECTION 29.** 139.75 (9m) of the statutes is created to read:

25 139.75 (9m) “Sign” has the meaning given in s. 139.01 (9m).

BILL

SECTION 30. Initial applicability.

(1) **REFUNDS AND TAXES COLLECTED ERRONEOUSLY.** The treatment of sections 50.14 (4), 73.01 (4) (a), and 77.59 (4) (c) and (5) of the statutes first applies to notices of refunds or notices of amounts due dated, offsets taken, and the discovery of amounts collected erroneously as taxes on the effective date of this subsection even if the notices, offsets, and amounts relate to sales that occurred after August 31, 1994.

(2) **MARRIED PERSONS' TAX LIABILITY.** The treatment of section 71.10 (6) (a) and (b) and (6m) (a) of the statutes first applies to tax liability that arises on the effective date of this subsection or that remains unpaid on the effective date of this subsection.

(3) RECONCILIATION REPORTS. The treatment of section 71.65 (5) (a) 1. of the statutes first applies to reconciliation reports that are due on January 31, 2004.

(4) INCOME TAX FILING DEADLINES FOR ELECTRONIC RETURNS. The treatment of section 71.03 (6) (a) and (8) (b) of the statutes takes effect only if the secretary of revenue issues a written certification to the governor that the federal government has extended the income tax filing deadline for electronically filed individual income tax returns in a way that is similar to the changes made by SECTIONS 3 and 4 of this act.

(END)

(#) APPEAL OF REDETERMINATION.

→ (#) APPEAL OF REDETERMINATION. ^(CS) The ~~the~~ treatment of section 71.88(2)(b) of the statute [✓] ~~but~~ applies to appeals filed on the effective date of this subsection. [✓]

Insert 7-24

Section #. 71.88 (2) (b) of the statutes is amended to read:

71.88 (2) (b) *Appeal of department's redetermination of credits.* Any person aggrieved by the department of revenue's redetermination of a credit under s. 71.07 (3m) ~~or (6)~~, 71.28 (1) or (2m) or 71.47 (1) or (2m) or subch. VIII or IX, except when the denial is based upon late filing of claim for credit or is based upon a redetermination under s. 71.55 (8) of rent constituting property taxes accrued as at arm's length, may appeal the redetermination to the tax appeals commission by filing a petition with the commission within 60 days after the redetermination, as provided under s. 73.01 (5) with respect to income or franchise tax cases, and review of the commission's decision may be had under s. 73.015. For appeals brought under this paragraph, the filing fee required under s. 73.01 (5) (a) does not apply.

History: 1987 a. 312; 1989 a. 31; 1991 a. 39; 1995 a. 27, 404. 1987 a. 312; 1989 a. 31; 1991 a. 39; 1995 a. 27, 404.

(end of insert)